

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-1959-MA-2017

Decided on : - 05.12.2017

Nafe Singh

... Applicant

Versus

Pardeep and another

... Respondents

CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. Kulvir Narwal, Advocate
for the applicant.

MAHABIR SINGH SINDHU, J. (Oral)

Present application under Section 378(4) of the Code of Criminal Procedure (for short 'Cr.P.C') has been filed by complainant-Nafe Singh for leave to appeal against the judgment dated 07.02.2009, passed by the learned Additional Chief Judicial Magistrate, Rohtak, vide which both the respondents have been acquitted of the charges under Sections 467 and 471 read with Section 34 IPC.

2. It is necessary to mention here that the aforesaid judgment of acquittal was challenged by the present applicant by way of a criminal revision but the same was dismissed by learned Additional Sessions Judge, Rohtak, vide judgment/order dated 17.05.2017 by observing that the complainant has a remedy to challenge the order of acquittal by filing an appeal under the provisions of Section 378 Cr.P.C. Hence, the present application for seeking leave to appeal.

3. Brief facts of the case are that complainant-applicant filed a complaint under Sections 420, 467, 468, 120-B and 471 IPC against both the respondents on the allegations that respondent No.1-Pardeep has committed a fraud and misrepresentation with Santosh widow of Attar as well as Manisha @ Manju daughter of Attar while obtaining power of attorneys dated 17.02.2009 and on the basis thereof executed sale deed dated 26.02.2009 in favour of his mother Chander Mukhi (respondent No.2). Further allegation is that respondent No.1 has taken Santosh and Manisha @ Manju to the office of Sub-Registrar, Rohtak, on the pretext of becoming witnesses to a document but they could not understand the ploy of respondent No.1.

4. After usual preliminary evidence, both the accused were summoned for commission of the offences punishable under Sections 467 and 471 read with Section 34 IPC and thereafter pre-charge evidence was recorded. After framing of the charges, CW1 and CW2 were cross-examined by the respondents and thereafter the evidence was closed by the complainant.

5. Incriminating material was put to the respondents under Section 313 Cr.P.C but they denied the same and claimed innocence. However, no evidence was led by them in their defence.

6. After taking into consideration the material available on record, learned trial Court acquitted both the respondents, vide judgment dated 07.02.2017 and as mentioned above, criminal revision has also been dismissed by learned Additional Sessions Judge, Rohtak, vide order dated 17.05.2017, being not maintainable.

7. It is argued by learned counsel for the applicant-complainant

that learned trial Court has committed a grave error of law while acquitting the respondents as there is sufficient material available on record to prove the charges levelled against them and as such the present application deserves to be allowed and special leave to appeal be granted. Further, it is argued that the applicant was a co-sharer and respondent No.1 as GPA of Santosh and Manisha @ Manju has sold more than their share.

8. Heard learned counsel for the applicant and perused the paperbook.

9. As per allegations of the complainant-applicant, accused No.1 had procured power of attorneys dated 17.02.2009 by playing a fraud upon Santosh and Manisha @ Manju and on the basis thereof a sale deed dated 26.02.2009 was executed in favour of his mother Chander Mukhi (respondent No.2) on the pretext of taking them to the office of Sub-Registrar, Rohtak, for becoming witnesses to a document; but they could not understand the ploy of respondent No.1, being illiterate.

10. Santosh has appeared as CW2 in the pre-charge evidence and in her deposition she stated that on 17.02.2009 both the respondents told that their signatures are required as witnesses in the tehsil office on the deed to be executed by respondent No.1 in favour of respondent No.2. It is further stated that when Manisha @ Manju tried to read the documents, then respondent No.1 snatched the same and he told that there is no relevancy to read the documents. She further stated that the respondents obtained their signatures on some papers and committed fraud, which was disclosed by the present applicant-complainant and Rameshwar. It is further stated that sale deed was executed by respondent No.1; but no money was paid to CW2- Santosh.

11. In this case Manisha @ Manju has not been examined as a witness by the complainant for reasons best known to him though she was a very material witness. CW2 has deposed in her testimony that Manisha @ Manju is 10th class pass and that is the reason that she tried to read the documents, but non-examination of Manisha @ Manju had been considered as fatal by learned trial Court and an adverse inference has been drawn. It has come on record that the registered power of attorneys dated 17.02.2009 was executed by Manisha @ Manju and Santosh in favour of respondent No.1 and got cancelled the same on 11.04.2011, vide Ex.C4 & Ex.C5 (produced in preliminary evidence by the complainant).

12. Learned trial Court in paragraph 15 of its judgment has clearly observed that in both the cancellation deeds it is nowhere alleged that the power of attorneys were obtained by fraud or forgery and both the cancellation deeds (Ex.C4 and Ex.C5) have not been produced in pre-charge as well as after charge evidence by the complainant for reasons best known to him. Learned trial Court has specifically observed that there is no fraud or forgery alleged in these cancellation deeds (Ex.C4 and Ex.C5). Moreover, both Santosh and Manisha @ Manju in this case have not come forward to file any complaint. The present complaint has been filed by the applicant-complainant and he has failed to substantiate the charges levelled against the respondents. There is no material available on record to prove that any fraud or forgery was played at the hands of respondent No.1 by obtaining the power of attorneys in question.

So far as respondent No.2 is concerned there is no allegation that she had played any role in obtaining the power of attorneys dated 17.02.2009 in favour of respondent No.1 and the only allegation against her

is that the sale deed dated 26.02.2009 was executed in her favour by respondent No.1 on the basis of alleged power of attorneys, which was obtained by him from Santosh and Manisha @ Manju and on the date of execution of the sale deed, the power of attorneys were legal and valid. So, nothing wrong has been done. Moreover, there is no evidence to prove that respondent No.1 as GPA of Santosh and Manisha @ Manju has sold more than their share.

13. In view of above, this Court does not find any merit in the present application and the same is, accordingly, dismissed. Leave to appeal is declined.

(T.P.S. MANN)
JUDGE

(MAHABIR SINGH SINDHU)
JUDGE

December 05, 2017

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Whether speaking/reasoned	:	Yes
Whether Reportable	:	No